

Haknam Singh Vs. State

Haknam Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/684396

Court : Delhi

Decided On : Aug-08-1968

Reported in : 1969CriLJ690; 4(1968)DLT573

Judge : I.D. Dua, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 247

Appeal No. : Criminal Revision Appeal No. 103D of 1966

Appellant : Haknam Singh

Respondent : State

Advocate for Pet/Ap. : K.R. Kalia and; V.D. Misra, Advs

Judgement :

I.D. Dua, J.

(1) The learned Additional Sessions Judge, Delhi, has referred this case to this Court with a recommendation that the revision be allowed and the petitioner be acquitted because on 3rd December, 1965, the complainant who is the registrar of the Chit Funds, was absent in the Court of the learned Sub-Divisional Magistrate and, therefore under section 247, Criminal Procedure Code, the Magistrate was bound to acquit the accused. The learned Magistrate on the other hand rejected the application of the accused praying for acquittal on the ground that the

complaint had been filed by a public servant in his capacity as such.

(2) The learned Additional Sessions Judge has in his order made a reference to a decision of the Allahabad High Court in *State v. Reva Chand*, and to a decision by Bhandari, C. J. in *Daulat Ram v. Ram Kishan*. The decision of the Orissa High Court cited on behalf of the State in the case of *Jagannath Sahu v. State*, was not followed by the learned Additional Sessions Judge because, in his opinion, the facts of the reported case appeared to be different and the learned Judge preferred to follow the decision of Bhandari, C.J.

(3) Unfortunately, the attention of the learned Additional Sessions Judge was not drawn to a later Division Bench decision of the Punjab High Court in *Stats v. Gurdial Singh Gill*, in which the decision of Bhandari, C.J seems to have been disapproved in this Bench decision, section 247, Cr. P.C. has been held to clothe the Magistrate with a discretion in the matter of dismissal of the complaint on the failure of the complainant to be present on the date of hearing. More recently, in *Prabh Dyal v. R. Mudgil*. another Division Bench of the Punjab High Court also took the same view. As a matter of fact, in this later decision, a certain passage has approvingly been quoted from the judgment in the case of *Gurdial Singh Gill*. The matter, so far as this Court is concerned seems to have been set at rest by a Bench decision of this Court in *Mohd. Yamin v. Zafar Mohammad*. In this judgment, as well as in the Bench decision of the Punjab High Court in *Prabh Dyal*, reference has been made to the Rules framed by the High Court contained in Vol. Iii, Chapter 1-F, High Court Rules and Orders which contains broad instructions for the guidance of the Magistrates, prominently bringing out the grave responsibility which rests on the trying Magistrates when deciding whether to adjourn the case or to proceed with the trial even in the absence of the complainant or to acquit the accused. These Rules have been construed to rule out any arbitrariness or fixed automatic rigidity of action on the part of the Magistrates in such circumstances. The Bench of this Court pointed out that these rules are supported by considerations of practical good sense and are designed to promote the cause of substantial justice.

(4) In the present case, the complainant being conscious of the difficulties he would be faced with if he were to appear at every hearing at the trial, made an express mention in the complaint itself and prayed that the personal presence of the complainant during trial may be dispensed with as he is an officer of the Government and is pre-occupied with his official duties. In my opinion, when the learned Magistrate disallowed the prayer of the accused to acquit him because of the absence of the complainant, he must have been conscious of this prayer and must be deemed to have dispensed with his presence. In any event, not acquitting the accused and adjourning the case can by no means be considered to be such an illegal order which must on revision be interfered with and acquittal of the accused ordered instead.

(5) For all the foregoing reasons, I do not find any merit in this revision which is dismissed. Parties are directed to appear before the trial Court on 26th August, 1968 when further proceedings would be held in accordance with law in the light of the observations made above. It is hoped that the case would be disposed of by the learned Magistrate with due dispatch.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com